

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 478

Introduced by Kremer, 34; Baker, 44; Burling, 33; Erdman, 47;
Schrock, 38

Read first time January 16, 2003

Committee: Agriculture

A BILL

1 FOR AN ACT relating to grain; to amend sections 75-901, 75-902,
2 88-525 to 88-528, 88-536, and 89-1,104.01, Reissue
3 Revised Statutes of Nebraska, and sections 75-156 and
4 75-903, Revised Statutes Supplement, 2002; to change
5 provisions relating to the Public Service Commission,
6 grain warehousemen, grain dealers, and grain moisture
7 measuring devices; to provide for civil penalties; to
8 harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-156, Revised Statutes Supplement,
2 2002, is amended to read:

3 75-156. (1) In addition to other penalties and relief
4 provided by law, the Public Service Commission may, upon a finding
5 that the violation is proven by clear and convincing evidence,
6 assess a civil penalty of up to ten thousand dollars per day
7 against any person, motor carrier, regulated motor carrier, common
8 carrier, ~~or~~ contract carrier, grain dealer, or grain warehouseman
9 for each violation of (a) any provision of sections 75-301 to
10 75-390 administered by the commission or section 75-126 as such
11 section applies to any person or carrier specified in sections
12 75-301 to 75-390, (b) a commission order entered pursuant to the
13 Automatic Dialing-Announcing Devices Act, the Emergency Telephone
14 Communications Systems Act, the Intrastate Pay-Per-Call Regulation
15 Act, the Nebraska Telecommunications Regulation Act, the Nebraska
16 Telecommunications Universal Service Fund Act, or the
17 Telecommunications Relay System Act, (c) any term, condition, or
18 limitation of any certificate or permit issued by the commission
19 pursuant to sections 75-301 to 75-390, ~~or~~ (d) any rule, regulation,
20 or order of the commission issued under authority delegated to the
21 commission pursuant to sections 75-301 to 75-390, or (e) any rule,
22 regulation, or order of the commission issued under the authority
23 delegated to the commission pursuant to the Grain Dealer Act or the
24 Grain Warehouse Act. The civil penalty assessed under this section
25 shall not exceed two million dollars per year for each violation.
26 The amount of the civil penalty assessed in each case shall be
27 based on the severity of the violation charged. The commission may
28 compromise or mitigate any penalty prior to hearing if all parties

1 agree. In determining the amount of the penalty, the commission
2 shall consider the appropriateness of the penalty in light of the
3 gravity of the violation and the good faith of the violator in
4 attempting to achieve compliance after notification of the
5 violation is given.

6 (2) Upon notice and hearing in accordance with this
7 section and section 75-157, the commission may enter an order
8 assessing a civil penalty of up to one hundred dollars against any
9 person, firm, partnership, limited liability company, corporation,
10 cooperative, or association for failure to file an annual report as
11 required by section 75-116 and as prescribed by commission rules
12 and regulations or for failure to register as required by section
13 86-125 and as prescribed by commission rules and regulations. Each
14 day during which the violation continues after the commission has
15 issued an order finding that a violation has occurred constitutes a
16 separate offense. Any party aggrieved by an order of the
17 commission under this section, except an order assessing a civil
18 penalty issued under subdivision (1)(b) of this section, has the
19 rights of appeal set forth in section 75-136.01. For an order
20 assessing a civil penalty issued under subdivision (1)(b) of this
21 section, any party aggrieved may appeal. The appeal shall be in
22 accordance with the Administrative Procedure Act.

23 (3) When any person or party is accused of any violation
24 listed in this section, the commission shall notify such person or
25 party in writing (a) setting forth the date, facts, and nature of
26 each act or omission upon which each charge of a violation is
27 based, (b) specifically identifying the particular statute,
28 certificate, permit, rule, regulation, or order purportedly

1 violated, (c) that a hearing will be held and the time, date, and
2 place of the hearing, (d) that in addition to the civil penalty,
3 the commission may enforce additional penalties and relief as
4 provided by law, and (e) that upon failure to pay any civil penalty
5 determined by the commission, the penalty may be collected by civil
6 action in the district court of Lancaster County.

7 Sec. 2. Section 75-901, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 75-901. Sections 75-901 to 75-909 and section 5 of this
10 act shall be known and may be cited as the Grain Dealer Act.

11 Sec. 3. Section 75-902, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 75-902. For purposes of the Grain Dealer Act, unless the
14 context otherwise requires:

15 (1) Commission means the Public Service Commission;

16 (2) Grain includes, but is not limited to, all
17 unprocessed beans, whole corn, milo and other sorghum, wheat, rye,
18 barley, oats, millet, safflower seed and processed plant pellets,
19 alfalfa pellets, and any other bulk pelleted agricultural storable
20 commodity, except grain which has been processed or packaged for
21 distribution as seed;

22 (3) Grain dealer means any person, partnership, limited
23 liability company, corporation, or association, other than a custom
24 feeder of livestock or poultry, or a state grain warehouse licensed
25 in Nebraska, or a grain warehouse located in Nebraska which is
26 licensed under the Grain Warehouse Act or located in Nebraska and
27 licensed under the United States Warehouse Act, who (a) buys grain
28 from its owner or producer within this state for purposes of

1 selling such grain, (b) transports grain into this state for
2 purposes of selling such grain, or (c) acts as an employee or agent
3 of a buyer or seller for purposes of collective bargaining in the
4 marketing of grain; and

5 (4) Producer means the owner, tenant, or operator of land
6 in this state who has an interest in and receives all or part of
7 the proceeds from the sale of grain produced on that land.

8 Sec. 4. Section 75-903, Revised Statutes Supplement,
9 2002, is amended to read:

10 75-903. All grain dealers doing business in this state
11 shall be licensed by the commission. If the applicant is an
12 individual, the application shall include the applicant's social
13 security number. To procure and maintain a license, each grain
14 dealer shall:

15 (1) Pay an annual fee of thirty dollars which shall be
16 due on or before the date established by the commission for each
17 license and a registration fee not to exceed twenty dollars per
18 year for each vehicle used by such licensee to transport grain.
19 Such fees shall be paid to the State Treasurer and credited to the
20 state General Fund;

21 (2) Equip each vehicle used by the licensee for grain
22 transportation with a commercial license plate registered with the
23 Department of Motor Vehicles, except that a licensee who resides in
24 another state shall license such vehicles according to the laws of
25 his or her state of residence;

26 (3) Affix a grain dealer plate issued by the commission
27 to each vehicle used by the licensee;

28 (4) File security which may be a bond issued by a

1 corporate surety company and payable to the commission, an
2 irrevocable letter of credit, or a certificate of deposit, subject
3 to the approval of the commission, for the benefit of any producer
4 or owner within this state who files a valid claim arising from a
5 sale to or purchase from a grain dealer. The security shall be in
6 the amount of thirty-five thousand dollars or seven percent of
7 grain purchases by the grain dealer in the preceding license year,
8 ~~as reported on a form prescribed by the commission,~~ whichever is
9 greater, not to exceed ~~one hundred fifty~~ three hundred thousand
10 dollars. Such security shall be furnished on the condition that
11 the licensee will pay for any grain purchased upon demand, not
12 later than thirty days after ~~taking possession of the grain~~
13 ~~purchased~~ the date of the last shipment of any contract. The
14 liability of the surety shall cover purchases and sales made or
15 arranged by the grain dealer during the time the bond is in force.
16 A grain dealer's bond filed with the commission shall be in
17 continuous force and effect until canceled by the surety. The
18 liability of the surety on any bond required by this section shall
19 not accumulate for each successive license period during which the
20 bond is in force; and

21 (5) ~~File,~~ as the commission may by rule or regulation
22 ~~require,~~ a financial statement of the licensee's operations as a
23 ~~grain dealer~~ a reviewed or audit level fiscal year-end financial
24 statement prepared by a person or firm which holds a permit granted
25 by the Nebraska State Board of Public Accountancy. If licensing as
26 an individual, the financial statement shall be prepared in
27 accordance with Other Comprehensive Basis of Accountancy, as filed
28 with the board, for a personal financial statement using historical

1 cost and accrual basis of accounting. If licensing as a
2 partnership, corporation, or limited liability company, the
3 financial statement shall be prepared in conformity with accounting
4 principles generally accepted in the United States. The financial
5 statement shall include: (a) A statement of income showing profit
6 and loss; (b) a balance sheet, (c) a statement of cash flow, (d) a
7 statement of proprietor's capital or retained earnings, (e) the
8 volume and dollar value of the grain purchases the licensee made in
9 Nebraska during the fiscal year, and (f) the accountant's
10 certification, assurances, opinions, and comments and the notes
11 with respect to the financial statement. If the volume and dollar
12 value of the grain purchases is not reported, the grain dealer
13 shall file the maximum grain dealer security as required by the
14 Grain Dealer Act.

15 If an applicant for a grain dealer license is a wholly
16 owned subsidiary of a parent company and such a financial statement
17 is not prepared for the subsidiary, the parent company shall submit
18 its reviewed or audit level fiscal year-end financial statement and
19 shall execute an unconditional guarantee agreement as prescribed by
20 the commission.

21 For each application filed after January 1, 2004, one of
22 the following primary parties shall be subject to fingerprinting
23 and a check of his or her criminal history record information
24 maintained by the Federal Bureau of Investigation through the
25 Nebraska State Patrol: (1) If the applicant is not an individual,
26 the chief executive officer, president, or general manager; or (2)
27 if the applicant is an individual, the individual. If the primary
28 party has been subject to a check of his or her criminal history

1 record pursuant to this section on a prior application, he or she
2 is not subject to another such check upon a subsequent application.
3 A primary party shall furnish to the Nebraska State Patrol a full
4 set of fingerprints to enable a criminal background investigation
5 to be conducted. The primary party shall request that the Nebraska
6 State Patrol submit the fingerprints to the Federal Bureau of
7 Investigation for a national criminal history record check. The
8 primary party shall pay the actual cost, if any, of the
9 fingerprinting and check of his or her criminal history record
10 information. The primary party shall authorize release of the
11 national criminal history record check to the commission. The
12 criminal history record information check shall be completed within
13 ninety days after the date the application for a license is
14 received in the commission's office, and if not, the application
15 shall be returned to the applicant. The commission shall deny a
16 warehouse license to any applicant whose primary party has been
17 convicted of a felony financial crime.

18 Sec. 5. The commission may assess a civil penalty,
19 pursuant to section 75-156, against any person who violates the
20 Grain Dealer Act.

21 Sec. 6. Section 88-525, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 88-525. Sections 88-525 to 88-552 and sections 10 and 12
24 of this act shall be known and may be cited as the Grain Warehouse
25 Act.

26 Sec. 7. Section 88-526, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 88-526. As used in the Grain Warehouse Act, unless the

1 context otherwise requires:

2 (1) Commission shall mean the Public Service Commission;

3 (2) Grain shall mean wheat, corn, oats, soybeans, barley,
4 rye, flax, or sorghum which has not been processed or packaged for
5 the purpose of distribution as seed, including, but not limited to,
6 edible beans, whole corn plant pellets, alfalfa pellets, millet,
7 sunflower seed, safflower seed, and any other bulk pelleted
8 agricultural storable commodity;

9 (3) Grain in storage shall mean any grain which has been
10 received at any warehouse ~~for which the actual sale price is not~~
11 ~~fixed and payment is not made within thirty days after the receipt~~
12 ~~of the grain and to which title has not been transferred to the~~
13 warehouseman by signed contract or priced scale ticket;

14 (4) Warehouse shall mean any grain elevator, mill, grist
15 mill, building, or receptacle in which grain is held in storage for
16 more than ten consecutive days;

17 (5) Warehouse licensee shall mean any warehouseman who is
18 licensed pursuant to the Grain Warehouse Act; and

19 (6) Warehouseman shall mean any person, partnership,
20 limited liability company, corporation, or association who (a)
21 receives grain for storage or stores or offers to store grain for
22 legal consideration for another person, partnership, limited
23 liability company, corporation, or association in a warehouse where
24 delivered or (b) receives grain for shipment to other points for
25 storage, consignment, or resale either in or out of this state.

26 Sec. 8. Section 88-527, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 88-527. (1) No person shall operate a warehouse nor act

1 as a warehouseman without a license issued pursuant to the Grain
2 Warehouse Act. Warehouses, except warehouses which are licensed
3 under the United States Warehouse Act, shall be licensed and
4 regulated by the commission. If the applicant is an individual,
5 the application shall include the applicant's social security
6 number. Such warehouses shall be inspected by the commission at
7 least once every twelve months.

8 (2) If the commission determines that additional
9 examinations are necessary after a regular examination is completed
10 at a warehouse, the commission may charge such warehouse for the
11 cost of the additional examinations according to the commission's
12 fee schedule. Warehouses shall only be charged if such
13 examinations are for reasons of irregularities from the previous
14 examination or if financial conditions warrant additional
15 examinations.

16 (3) The commission may make available to the United
17 States Government or any of its agencies, including the Commodity
18 Credit Corporation, the results of inspections made and inspection
19 reports submitted by employees of the commission upon payment of
20 such fees as may be determined by the commission. The fees shall
21 cover the actual cost of the services rendered in regard to
22 providing the information.

23 ~~(3)~~ (4) The commission may charge for inspections
24 conducted at the request of a warehouse licensee. The commission
25 may assess a surveillance fee against the assets of a warehouse
26 licensee for actual expenses incurred by the commission in
27 suspending a license or terminating the operations of a warehouse
28 licensee. The commission may enter into contracts for such purpose

1 and shall keep a record of all surveillance fees collected. All
2 surveillance fees collected by the commission shall be deposited in
3 the Nebraska Grain Warehouse Surveillance Cash Fund.

4 ~~(4)~~ (5) The commission may enter into agreements and
5 contracts with regulators in states which border Nebraska for the
6 purpose of licensing or examining any public grain warehouseman
7 which operates facilities in such states. The commission shall
8 assume all jurisdiction over any warehouseman headquartered in
9 Nebraska regarding his or her warehouse activity. A warehouseman
10 headquartered and licensed in another state which acquires
11 facilities in Nebraska is under the jurisdiction of the headquarter
12 state under the terms of such agreement or contract.

13 Sec. 9. Section 88-528, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 88-528. Each applicant for a license and each warehouse
16 licensee shall annually file an application with the commission and
17 shall submit to a criminal background check as set forth in section
18 10 of this act. The application shall be in the form prescribed by
19 the commission to do business under the Grain Warehouse Act and
20 shall include a ~~report of an audit or review~~ a reviewed or audit
21 level fiscal year-end financial statement prepared in accordance
22 with generally accepted accounting practices in the United States
23 ~~and conducted~~ by a person or firm which holds a permit granted by
24 the Nebraska State Board of Public Accountancy. If licensing as an
25 individual, the financial statement shall be prepared in accordance
26 with Other Comprehensive Basis of Accountancy, as filed with the
27 board, for a personal financial statement, using historical cost
28 and accrual basis of accounting. The financial statement ~~Each~~

1 ~~report shall include: , but not be limited to, the following:~~ (1)
2 A balance sheet; (2) a statement of income showing profit or loss;
3 (3) a statement of retained earnings; (4) a statement of changes in
4 the financial position; and (5) the accountant's certifications,
5 assurances, opinions, comments, and notes with regard to such
6 report. Such application shall set forth the location of the
7 warehouse to be used by the applicant, its relation to railroad
8 trackage, its capacity, its general plan and equipment, and its
9 ownership.

10 If an applicant for a license is a wholly owned
11 subsidiary of a parent company and such a financial statement is
12 not prepared for the subsidiary, the parent company shall submit
13 its reviewed or audit level fiscal year-end financial statement and
14 shall execute an unconditional guarantee agreement as prescribed by
15 the commission.

16 Sec. 10. For each application filed after January 1,
17 2004, one of the following primary parties shall be subject to
18 fingerprinting and a check of his or her criminal history record
19 information maintained by the Federal Bureau of Investigation
20 through the Nebraska State Patrol: (1) If the applicant is not an
21 individual, the chief executive officer, president, or general
22 manager; or (2) if the applicant is an individual, the individual.
23 If the primary party has been subject to a check of his or her
24 criminal history record pursuant to this section on a prior
25 application, he or she is not subject to another such check upon a
26 subsequent application. A primary party shall furnish to the
27 Nebraska State Patrol a full set of fingerprints to enable a
28 criminal background investigation to be conducted. The primary

1 party shall request that the Nebraska State Patrol submit the
2 fingerprints to the Federal Bureau of Investigation for a national
3 criminal history record check. The primary party shall pay the
4 actual cost, if any, of the fingerprinting and check of his or her
5 criminal history record information. The primary party shall
6 authorize release of the national criminal history record check to
7 the commission. The criminal history record information check
8 shall be completed within ninety days after the date the
9 application for a license is received in the commission's office,
10 and if not, the application shall be returned to the applicant.
11 The commission shall deny a warehouse license to any applicant
12 whose primary party has been convicted of a felony financial crime.

13 Sec. 11. Section 88-536, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 88-536. (1) Within fifteen days after demand by the
16 owner or deliverer of any grain to a warehouse for storage, the
17 warehouse licensee shall issue a lawful negotiable or nonnegotiable
18 receipt to such owner or deliverer of such grain. The receipt
19 shall state the date of delivery, the name of the owner, and the
20 grade, gross weight, dockage, and net weight of the grain
21 represented in the receipt.

22 (2) (a) The commission shall prepare forms for such
23 receipts which shall be used by all warehouse licensees and
24 ~~registered~~ and may adopt procedures for the electronic issuance of
25 such receipts. All warehouse licensees shall either use forms
26 prepared by the commission for such receipts or follow procedures
27 adopted by the commission for electronic issuing of such receipts.
28 Warehouse licensees that use forms prepared by the commission shall

1 register such receipts with the commission.

2 (b) The commission shall fix charges to be assessed and
3 collected for such warehouse receipt forms not to exceed the cost
4 of printing, delivering, and handling. Payment of such charges
5 shall be made in advance of delivery of such receipt forms and
6 shall entitle each such receipt to registration without any further
7 charge or fee. The commission may make refunds of such charges for
8 such unused receipt forms as may be returned to the commission.

9 (c) All procedures for electronic filing of receipts
10 adopted by the commission shall comply with section 86-611. The
11 commission may adopt authentication procedures to verify receipts
12 issued electronically. Compliance with the authentication
13 procedures adopted by the commission shall have the same validity
14 as a signature on any receipt.

15 (3) Any warehouse licensee may issue a receipt to himself
16 or herself as the owner of grain stored in his or her own
17 warehouse, which receipt shall be registered with the commission.
18 Upon receiving any such grain warehouse receipt for registration
19 and being satisfied that the provisions of the Grain Warehouse Act
20 and any rules and regulations adopted and promulgated pursuant to
21 the act have been complied with, the commission shall cause such
22 receipt to be registered.

23 Sec. 12. The commission may assess a civil penalty,
24 pursuant to section 75-156, against any person who violates the
25 Grain Warehouse Act.

26 Sec. 13. Section 89-1,104.01, Reissue Revised Statutes
27 of Nebraska, is amended to read:

28 89-1,104.01. The fees charged pursuant to section

1 89-1,104 shall be remitted by the Public Service Commission to the
2 State Treasurer. The State Treasurer shall credit ~~the first twenty~~
3 ~~thousand dollars~~ of such fees to the Moisture Testing Examination
4 Fund, which fund is hereby created. The fund shall be appropriated
5 to the Public Service Commission to ~~purchase or repair moisture~~
6 ~~field and laboratory equipment~~ be used to cover the costs
7 associated with the grain moisture measuring devices program. The
8 money in such fund may be used at any time by the commission. Any
9 money in the fund available for investment shall be invested by the
10 state investment officer pursuant to the Nebraska Capital Expansion
11 Act and the Nebraska State Funds Investment Act.

12 ~~The State Treasurer shall credit any fees in excess of~~
13 ~~twenty thousand dollars to the General Fund. If at any time the~~
14 ~~funds in the Moisture Testing Examination Fund drop below twenty~~
15 ~~thousand dollars, the fees remitted by the Public Service~~
16 ~~Commission to the State Treasurer shall be credited to the Moisture~~
17 ~~Testing Examination Fund until such fund has a balance of twenty~~
18 ~~thousand dollars.~~

19 Sec. 14. Original sections 75-901, 75-902, 88-525 to
20 88-528, 88-536, and 89-1,104.01, Reissue Revised Statutes of
21 Nebraska, and sections 75-156 and 75-903, Revised Statutes
22 Supplement, 2002, are repealed.